

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

GREGORY HUMPHREY,

Plaintiff,

v.

MICHAEL ALLEN, CO II Officer, and
RYAN MOSES, CO II Officer,

Defendants.

CV 119-006

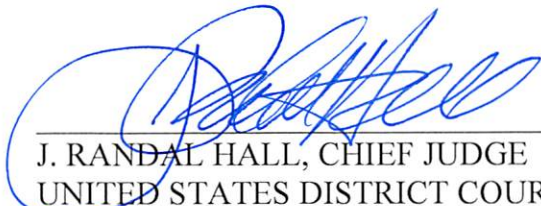
ORDER

After a careful, *de novo* review of the file, the Court concurs with the Magistrate Judge's Report and Recommendation ("R&R"), to which objections have been filed. (Doc. no. 14.) Although nothing in Plaintiff's objections undermines the Magistrate Judge's recommendations, the Court will briefly address one of Plaintiff's arguments. In his objections, Plaintiff contends for the first time Defendants intentionally left the deadbolts unlocked on the cells of the inmates who attacked him. (*Id.* at 1.) While courts have the discretion to consider novel evidence, factual claims, and legal argument raised for the first time in an objection to an R&R, they are under no obligation to do so. Frone v. JP Morgan Chase & Co., 695 F. App'x 468, 472 (11th Cir. 2017) (concluding district judge has broad discretion in considering argument not presented to magistrate judge); Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009) (same). The Court declines to do so here.

However, even if the Court were to consider the new information, it fails to undermine the Magistrate Judge's R&R. Plaintiff's new allegation is conclusory and inconsistent with the allegations in his complaint, which indicate Defendants were responsible for securing the unit and merely failed to do so. (See doc. no. 1, p. 5.) Moreover, even if Plaintiff's new information was sufficient to state an arguable deliberate indifference claim, his complaint would still be subject to dismissal for failure to exhaust administrative remedies, as found in the Magistrate Judge's R&R. (Doc. no. 9, pp. 4-7.)

Accordingly, the Court **OVERRULES** Plaintiff's objections, **ADOPTS** the Report and Recommendation of the Magistrate Judge as its opinion, **DISMISSES** Plaintiff's complaint for failure to state a claim upon which relief may be granted, and **CLOSES** this civil action.

SO ORDERED this 15th day of April, 2019, at Augusta, Georgia.



J. RANDAL HALL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA